

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PERRY LEE SISCO,

Plaintiff,

No. CIV S-05-0867 GEB JFM P

vs.

STATE OF CALIFORNIA, et al.,

Defendants.

ORDER

_____/

Plaintiff is a former state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. On March 8, 2006, this court issued findings and recommendations recommending dismissal of defendants Beruth, Schmidt, Spears, and Falconer due to plaintiff's failure to provide information necessary for service of process on said defendants. On April 17, 2006, plaintiff filed objections to the findings and recommendations in which he contends that he has had difficulty finding the required information and he asks for additional time and assistance from the court to obtain the information. On May 22, 2006, plaintiff filed a request for an extension of the dates set in the discovery and scheduling orders filed in this action on January 12, 2006, for appointment of counsel, and for court assistance in obtaining information for service of process on defendants Beruth, Schmidt, Spears, and Falconer.

Neither plaintiff's objections nor his request for extension of time were served on defendants. Plaintiff is advised that every document submitted to the court for consideration must be served on defendants. Fed. R. Civ. P. 5. Plaintiff is required to serve all documents in this action conventionally in accordance with the relevant provisions of Fed. R. Civ. P. 5. See Local Rule 5-135(b). Since an attorney has filed a document with the court on behalf of defendants, documents submitted by plaintiff must be served on that attorney and not on the defendant. Fed. R. Civ. P. 5(b)(1). Conventional service is usually accomplished by mailing a copy of the document to the attorney's address of record. See Fed. R. Civ. P. 5(b)(2)(B). Plaintiff must include with every document filed in this action a certificate stating the date an accurate copy of the document was mailed to defendants' attorney and the address to which it was mailed. See Local Rule 5-135(b) and (c).

Good cause appearing, the court will vacate the March 8, 2006 findings and recommendations and will give plaintiff an additional period of sixty days in which to provide information necessary for service of process on the four defendants who remain unserved in this action. The court will not at this time intervene on plaintiff's behalf to seek such information. Plaintiff is again advised that he may seek such information through a proper discovery request served on the other defendants in this action, see Fed. R. Civ. P. 26-37, or through the California Public Records Act, Calif. Gov't. Code § 6250, et seq., or other means available to plaintiff. Plaintiff should not seek judicial intervention unless he properly seeks such information by one or more of the foregoing means and thereafter access to the required information is denied or unreasonably delayed.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In

1 the present case, the court does not find the required exceptional circumstances. Plaintiff's
2 request for the appointment of counsel will therefore be denied.

3 Finally, good cause appearing, the court will by separate order set a revised
4 schedule for this action that will extend by six months all deadlines set in the scheduling order
5 filed January 12, 2006.

6 In accordance with the above, IT IS HEREBY ORDERED that:

- 7 1. The findings and recommendations filed March 8, 2006 are vacated.
8 2. The Clerk of the Court is directed to send to plaintiff four USM-285 forms,
9 along with an instruction sheet and a copy of the complaint filed May 2, 2005.
10 3. Within sixty days from the date of this order, plaintiff shall complete and
11 submit the attached Notice of Submission of Documents to the court, with the following
12 documents:

- 13 a. One completed USM-285 form for each defendant referred to in this
14 order;
15 b. Five copies of the endorsed complaint filed May 2, 2005; and
16 c. One completed summons form (if not previously provided)
17 or show good cause why he cannot provide such information.

- 18 4. Plaintiff's May 22, 2006 request for appointment of counsel is denied.
19 5. Plaintiff's May 22, 2006 request for an extension of discovery and other
20 scheduled dates is granted.

21 DATED: June 12, 2006.

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24 UNITED STATES MAGISTRATE JUDGE

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NOTICE OF SUBMISSION

OF DOCUMENTS

_____/

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

1 completed summons form

4 completed USM-285 forms

5 copies of the May 2, 2005
Complaint

DATED:

Plaintiff